BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	**CC Docket No. 96-98**

COMMENTS OF SBC COMMUNICATIONS INC. RELATING TO DIALING PARITY, NUMBER ADMINISTRATION, NOTICE OF TECHNICAL CHANGES, AND ACCESS TO RIGHTS OF WAY

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CC Docket No. 96-98

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SUMMARY*

SBC's Comments herein deal only with the issues of dialing parity, number administration, notice of technical changes, and access to rights-of-way. In each area, the intent of Congress was to reduce the regulatory burden. The Commission can fulfill the Congressional mandate with minimal regulation, allowing the market to govern the industry and ensure the lowest prices possible for consumers.

1. Dialing Parity

IntraLATA toll dialing parity will allow customers to dial the same number of digits to reach the presubscribed intraLATA carrier for a given line, regardless of which carrier has been chosen. The "two PIC method" allows consumers the option of having separate interLATA and intraLATA presubscribed carriers. The Commission should not require LECs to notify consumers of carrier selection procedures. Such a requirement would, in effect, force some carriers to provide and to pay for advertising for others. Instead, consistent with an open market philosophy, all carriers should be responsible for soliciting their own customers.

Under the Act, dialing parity involves nondiscriminatory access to operator services. SWBT will provide such access to all providers (non-facilities-based and facilities-based). Any telephone customer, regardless of his local telephone service provider, will be able to connect to an operator by dialing "0" or "0" plus the desired number. All operator services should be offered only pursuant to voluntarily negotiated agreements so that LECs will not be placed in the incongruous position of being required to provide operator services to certain carriers under both tariff and contract.

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* All abbreviations used herein are referenced within the text.

SWBT proposes to offer nondiscriminatory access to a SWBT local directory assistance operator and a directory listing to all competitive providers. Customers of such providers will then have access to the same directory assistance services that SWBT provides its own subscribers.

2. Number Administration

Number administration is best performed by a single independent entity approved by the Commission, but not otherwise associated with any regulatory agency and not closely identified with any industry segment. Bellcore and the LECs should continue to perform the administration of numbers, pursuant to industry guidelines, until the functions are transferred to the new NANPA.

The Act gives the Commission exclusive jurisdiction over number administration, but allows the Commission to delegate part of this jurisdiction to the states. While the Commission should retain broad jurisdiction, it should also delegate to state commissions, subject to the principles established in the Ameritech Order, limited matters involving the implementation of new area codes.

SBC supports the expeditious transfer and centralization of CO code administration into the new NANPA, but urges that all unresolved issues first be fully addressed and resolved. Premature transfer of CO code assignment responsibility--before the industry has answered the many unresolved issues in this area--would be counterproductive, especially in areas running out of telephone numbers.

3. Public Notice of Technical Changes

Industry guidelines for public notice of technical changes already exist in RECOMMENDED NOTIFICATION PROCEDURES TO INDUSTRY FOR CHANGES IN ACCESS NETWORK ARCHITECTURE, ICCF 92-0726-004, revision date January 5, 1996. These guidelines are issued by the Industry Carriers Compatibility Forum, and set forth notification procedures followed by the

industry for numerous issues, including the maintenance of business relationships, problem resolution procedures and information reporting intervals. The Commission has been well aware of this industry process and need not promulgate any new regulations.

4. Access to Rights-of-Way

Consistent with the 1996 Act and the Commission's historical approach to regulation of the "rates, term and conditions" of utility right-of-way agreements under the Pole Attachment Act, the Commission should not adopt detailed rules to regulate the provision of nondiscriminatory access to rights-of-way. Just as the Commission did not adopt rules defining what "terms and conditions" would be considered reasonable under the pre-1996 Pole Attachment Act, the Commission need not adopt such rules governing access to rights-of-way. Instead, specific right-of-way issues should be resolved through private negotiation. If negotiation fails, the Commission's existing pole attachment complaint procedures have proven to work well. If the Commission must adopt any rules, it should only adopt flexible, general principles that will allow utilities to have a variety of procedures for providing access to rights-of-way consistent with their operations and business needs.

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RELATING TO DIALING PARITY, NUMBER ADMINISTRATION,
NOTICE OF TECHNICAL CHANGES, AND ACCESS TO RIGHTS OF WAY

SBC Communications Inc. (SBC), by its Attorneys and on behalf of its subsidiaries, including Southwestern Bell Telephone Company (SWBT), Southwestern Bell Mobile Systems (SBMS), and Southwestern Bell Communications Services, Inc. (SBCS), files these Comments in response to the Notice of Proposed Rulemaking (NPRM) in this proceeding.

As the NPRM notes, Congress intended the Telecommunications Act of 1996[1] (the Act) to encourage competition in and reduce regulation of the telephone industry.[2] For example, the Joint Explanatory Statement states that the 1996 Act should provide "a pro-competitive, *de-regulatory* national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[3]

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[1]Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56 [1996 Act].

[2] NPRM at ¶¶1-3.

[3] S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996) [emphasis added].

SBC's Comments in this phase of the docket deal only with the issues of dialing parity, number administration, notice of technical changes, and access to rights-of-way. The intent of Congress with respect to these issues is no different, however, from its intent with respect to the more numerous issues addressed in SBC's Comments filed May 16, 1996, in this docket. Congress passed the Act to encourage the marketplace to function efficiently and competitively. Furthering this intent should be the Commission's focused goal.

I. DIALING PARITY

Under Section 251(b)(3) of the Act, all Local Exchange Carriers (LECs) are required to provide "dialing parity" to "competing providers of telephone exchange service and telephone toll service." This Section also requires LECs to permit nondiscriminatory access to "telephone numbers, operator services, directory assistance, and directory listings."

Section 3(a)(39) defines "dialing parity" to mean that:

> ". . . a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications service providers (including such local exchange carrier)."

A. IntraLATA Toll Dialing Parity

IntraLATA toll dialing parity[4] will allow customers to dial the same number of digits to complete an IntraLATA toll call regardless of which carrier has been chosen. Even with intraLATA dialing parity, the LEC customer will still be able to select another intraLATA carrier by dialing an access code, such as "10XXX" or "101XXXX." (See Section C infra.)

Section 271(e)(2)(A & B) of the Act provides that a BOC granted authority by the Commission to provide interLATA service in a state must also provide intraLATA toll dialing parity throughout that state, and that no state may compel a BOC to provide intraLATA toll dialing parity before the BOC provides interLATA service in that state, or before three years after the enactment of the legislation, whichever occurs first. The Commission has no obligation to require implementation of intraLATA toll dialing parity on an earlier schedule.

Each end user should be allowed to choose either one or two carriers for intraLATA and interLATA toll calls--the "two PIC (Primary Interexchange Carrier) method." Implementation of intraLATA toll dialing parity should not force end users to change either intraLATA or interLATA providers. The two PIC method allows the subscriber to presubscribe to any participating toll carrier.

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[4] As footnote 284 of the NPRM points out, the customer's ability to choose a local service provider and place local calls without dialing extra digits "will be accomplished through the unbundling, number portability and interconnection requirements of Section 251." In other words, each end user will choose a local service provider, which will have a direct relationship with each customer. All local calls in SWBT's five state territory, using any telecommunications provider, will be dialed on a seven (7) or ten (10) digit basis, depending on the number of Number Plan Areas (NPAs) within the local calling scope. It is then the obligation of the local service provider to offer intraLATA and interLATA toll dialing parity to enable the end user to reach the customer-selected carrier.

The subscriber can select the same or different service providers for each type of toll call (interLATA and intraLATA) without restriction.

B. Customer Notification

The Act does not require that procedures be established for notifying customers of options for choosing local and intraLATA toll providers. Paragraph 213 of the NPRM inquires whether the Commission "should require LECs to notify consumers about carrier selection procedures." The NPRM also seeks comments on whether to require individual telecommunications providers, through marketing efforts, to notify customers about carrier choices and selection procedures. The Commission should not promulgate any "procedures" requiring LECs to notify consumers of carrier selection procedures. Such a requirement would, in effect, force incumbent carriers to provide and to pay for the advertising for new entrants.[5] The Commission should simply allow the alternative proposal: all carriers should be responsible for soliciting their own customers, which is consistent with the competitive market envisioned by Congress.

C. Access Code Dialing Parity

If the calling party does not want to use the presubscribed carrier for an intraLATA toll call, the calling party may dial a Carrier Access Code (CAC) to reach another carrier. A key component of the CAC is the Carrier Identification Code (CIC). The CAC for Feature Group D access presently

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[5] This is no more reasonable than requiring AT&T to advertise for MCI or SBC, or for AT&T, MCI and Sprint to ballot their customers when SBC enters the interLATA market. Moreover, who would determine which carriers could be on the ballot? How would the determination be made? What criteria would be used? The possibilities for conflict and confusion are enormous.

exists in two formats, 10XXX[6] and 101XXXX, where XXX and XXXX represent the CICs. The customer of any carrier which has been assigned a new four digit CIC in the 5XXX and 6XXX ranges must dial seven digits rather than five digits to reach the preferred carrier.

The Commission should terminate the transition, or permissive, dialing period for CICs. This period, which permits the use of both the 10XXX and the 101XXXX CAC dialing formats, began April 1, 1995. There is no reason why this period should last beyond eighteen months, and there have been no persuasive arguments placed on the record in that regard. Therefore, the Commission should end the permissive dialing period for CICs not later than December 31, 1996.

D. International Calls

Paragraph 206 of the NPRM concludes that Section 251(b)(3) of the Act requires all carriers to provide dialing parity for international calls, even though the statutory language does not mention international traffic. Dialing parity is appropriate for international calls, as long as the Commission does not also require LECs to offer end users a separate and distinct choice from the chosen interLATA carrier for international traffic. SWBT's switches will accept only preselected carriers for interLATA and intraLATA traffic.[7] The vast majority of LEC networks simply do not allow a separate, or third, choice for international traffic.

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[6] X = 0 through 9.

[7] Currently, five Siemens switches in the SWBT network, serving approximately 3000 customers, have only a single PIC capability. SWBT plans to replace these switches by first or second quarter 1997. Once the Commission's Order has become final in this docket, SWBT plans to seek a waiver for these five switches from dialing parity requirements, until the switches are replaced.

E. Operator Services

Paragraph 216 of the NPRM defines nondiscriminatory access to operator services to mean that "a telephone service customer, regardless of the identity of his local telephone service provider, must be able to connect to a local operator by dialing '0' or '0' plus the desired telephone number."

SBC agrees with the Commission's position. Additionally, SBC agrees that the LECs should make operator services available to all competitive providers (facilities and non-facilities-based) under voluntarily negotiated agreements. SBC will provide non-discriminatory access to a SWBT local operator and the same operator call completion services that SWBT provides to its own subscribers. In other Comments filed in this docket, SBC strongly disagrees with the Commission's tentative conclusion that incumbent LECs should be required to unbundle operator call completion services as a network element pursuant to Section 251(c) of the Act.

The Commission has an opportunity and the authority, however, to determine that the filing of tariffs for LEC provisioning of operator services to IXCs should no longer be required. All operator services should be provided pursuant to voluntarily negotiated agreements, because, under the Act, telecommunications providers may function as both an IXC and a competitive local service provider. SWBT, for example, currently offers operator services to IXCs through SWBT's Designated Operator Services (DOS) federal tariff. Operator services to competitive local service providers, on the other hand, will be provided under voluntarily negotiated agreements. SWBT is thus in the incongruous position of being required to provide essentially the same service under both tariff and contract, potentially to the same telecommunications carrier.

The Commission is clearly aware of the intensely competitive nature of the operator services market and the availability of alterative suppliers other than incumbent LECs. Tariffing of operator

services is thus no longer necessary. The Commission should forebear from further regulation in this area.

F. Directory Assistance and Directory Listing

SBC agrees with the Commission's definition, at paragraph 217 of the NPRM, of "nondiscriminatory access to directory assistance and directory listing": "All telecommunications services providers' customers must be able to access each LEC's directory assistance service and obtain a directory listing in the same manner." LECs have a duty to provide directory assistance services to all competitive providers (facilities and non-facilities-based) pursuant to voluntarily negotiated agreements. SBC will provide competitive providers with non-discriminatory access to a directory listing and a SWBT local directory assistance operator, which SWBT provides to its own subscribers.

SBC agrees with the Commission's observation, at paragraph 45 of the NPRM, that a "potential competitor would be required to make available to an incumbent LEC directory assistance information on the same basis that the LEC agreed to furnish the information." These types of negotiated reciprocal arrangements are not only mutually beneficial, they are necessary to ensure that all telecommunications service providers' customers, regardless of the identity of their local telephone service provider, are able to access each LEC's directory assistance information without the need for an alternative dialing arrangement.

G. Telephone Numbers

The Act requires that all providers of local services have non-discriminatory access to telephone numbers. The NPRM, at paragraph 215, interprets this requirement to mean that

competing telecommunications providers must be provided access to telephone numbers in the same manner that such numbers are provided to incumbent LECs.

Currently, individual telephone numbers are obtained through the assignment of Central Office (CO) codes--ten thousand numbers per code. SWBT, as the CO code administrator for SWBT's five-state region, assigns codes on a nondiscriminatory basis to service providers. In a separate docket, the Commission has ordered that CO code assignment be centralized in a newly created North American Numbering Plan Administrator (NANPA).[8] Since the new administrator will have no connections to any industry participant, the Commission need take no further action, beyond the prompt establishment of the new NANPA, to ensure nondiscriminatory access to telephone numbers.

H. Cost Recovery

Carriers should be allowed the opportunity to recover all costs related to the provision of dialing parity, including directly assignable costs (end office software, STP augmentation, etc.) and shared costs (such as third party administration). In addition, carriers should be allowed to recover that portion of their infrastructure investment (for example, AIN) which is necessary to provide dialing parity.

Cost recovery is an area where the market should govern, not regulation. The NPRM, at paragraph 219, notes that the Act "does not specify how LECs would recover costs associated with

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[8] See the Report and Order in CC Docket No. 92-237, Administration of the North American Numbering Plan, FCC 95-283, 11 FCC Rcd 2588 (rel. July 13, 1995). To date, however, the Commission has not selected the industry committee which will begin the process of selecting the new NANPA, despite the Commission's concern that the industry committee convene "promptly." (See para. 108.)

providing dialing parity to competing providers." The absence of cost recovery provisions in the Act is consistent with the Congressional intent of using negotiation to move toward deregulation. All aspects of dialing parity should be the subject of voluntarily negotiated agreements among services providers.

II. NUMBER ADMINISTRATION

A. Numbering Administration

The Act requires the Commission to designate an impartial entity to administer and assign numbers. As discussed above, the Commission has already commenced a docket to select a new and independent NANPA, but the industry committee which will actually select the new administrator has not yet been chosen. Selection of a new NANPA will satisfy the requirements of the Act.[9]

Number administration is best performed by a single independent entity approved by the Commission, but not otherwise associated with any regulatory agency and not identified with any industry segment. Designating more than one entity to perform numbering administration would inevitably generate conflicts, confusion and additional costs.

Bellcore and the LECs should continue to perform the administration of numbers, pursuant to industry guidelines, until the functions are transferred to the new NANPA. However, the Commission should form the North American Numbering Council (NANC) quickly and begin the transfer of responsibilities.

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[9] NPRM at ¶252.

B. Area Code Assignment

The Act expressly gives the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."[10] The Act also gives the FCC the authority to delegate portions of such jurisdiction to the state commissions or other entities.[11]

SBC supports the NPRM's tentative conclusion that the Commission should retain its authority to set policy with respect to all facets of numbering administration, including area code relief issues.[12] The Commission should, however, delegate certain limited decisions involving the implementation of area codes to the state commissions.

The FCC has provided general area code guidelines in the Ameritech Order,[13] but there still appears to be confusion among some state commissions, especially as to whether a wireless-only overlay can be ordered. Indeed, the NPRM notes, citing a recent Texas Commission Order, that some state commissions appear to be acting in violation of the general guidelines.[14] The NPRM questions 1) whether the Commission should reassess the jurisdictional balance between the states as crafted in the Ameritech Order and 2) what actions the Commission should take when a state appears to be acting inconsistently with the numbering guidelines.

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[10]Sec. 251(e)(1).

[11]Id.

[12]NPRM, at ¶ 254.

[13]Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) (Ameritech Order)(recon. pending).

[14]See, NPRM, para. 257 & Fn. 358.

While the Commission should retain broad jurisdiction over all numbering matters, the state commissions should be allowed to make decisions on 1) whether the relief granted should be an all-service overlay or a split and 2) where the boundaries should be drawn. In addition, the Commission should explicitly state that a mandated wireless-only overlay is a per se violation of the Communications Act and clarify that implementation of a new area code should not discriminate against or unduly burden any particular technology.[15]

C. Central Office Code Assignment

The expeditious transfer and centralization of CO code administration into the new NANPA is appropriate, but all relevant issues must first be fully addressed and resolved. The issues currently surrounding CO code assignment are diverse and difficult. Premature transfer of CO code

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[15] The FCC should clarify that measures that can be taken in implementing a split or overlay to reduce the hardship on a particular technology and its customers, while not harming any other technology or its customers, do not constitute prohibited discriminatory treatment. For example, the Illinois and Missouri Commissions have acknowledged that the expense and inconvenience associated with reprogramming cellular phones to change the phone number created a significant impact on cellular carriers and their customers, which impact could be reduced by allowing voluntary conversions to the new area code. Illinois Bell Telephone Company, Petition for Approval of NPA Relief for 708 Area Code by Establishing a 630 Area Code; Illinois Commerce Commission No. 94-0315, Order, pp. 26, 30 (dated March 20, 1995); Illinois Bell Telephone Company, Petition for Approval of Stipulation and Agreement of the Parties for a 312 Relief Plan, Illinois Commerce Commission No. 95-0371, Order, pp. 10-14, 22-23 (dated November 20, 1995); In the Matter of the Investigation into the Exhaustion of Telephone Numbers in the 314 Numbering Plan Area, Missouri Public Service Commission No. TO-95-289, Report and Order, p. 13 (dated July 5, 1995). Thus, both Commissions have allowed voluntary wireless conversions to the new area code, relying on the natural migration of customers wanting an area code to match their calling patterns rather than mandating changes by a specific date. In Illinois, the Numbering Administrator determined that such voluntary conversions would not significantly effect future numbering exhausts. Thus, the Illinois Commission has allowed voluntary conversions in splitting the 708 NPA and the 312 NPA. Likewise, the Missouri Commission agreed to voluntary wireless conversions. Such common sense approaches should not be precluded solely on the basis of claims that wireless is being treated differently than wireline.

assignment responsibility--before all the issues are resolved--could be a disaster, especially in areas running out of telephone numbers.

Administration of CO codes, currently performed by the major LEC in a given service area, includes four major categories: (1) CO code assignments, (2) code tracking and forecasting, (3) NPA relief planning, and (4) code activation.

Code assignment is not simply a matter of handing out telephone numbers to whoever requests them. Code administrators must process requests for expedited treatment. Administrators must determine if the requesting entity is entitled to a code under the assignment guidelines. Because the number of telecommunications providers will grow enormously under the Act, numbers will run out much faster than before. SWBT, as CO codes administrator for its five state region, assigns CO codes mechanically, but individuals analyze each code request separately to ensure that codes are assigned under the guidelines only to eligible carriers. Thus, code administrators need local knowledge of authorized carriers, service areas, and toll/local calling areas.

Some of the functions of code tracking and forecasting include: (1) administering the code assignment tracking database, including information on assigned and available codes, (2) conducting an annual survey of code users to aid forecasting, and (3) updating knowledge of new technologies, services and markets to assess impact on projected code requirements. These functions are critical if relief plans are to be initiated at the appropriate time. The implementation of relief plans also requires an in-depth knowledge of local and national regulatory and business trends.

A code administrator, when planning NPA relief, must estimate when CO codes will run out, must notify the industry of pending CO code exhaust, must organize and facilitate industry planning meetings, at which NPA relief alternatives will be discussed, and must notify the appropriate

regulatory bodies of what consensus relief plan is adopted by the industry. Relief planning follows industry guidelines--INC 94-1216-004, and INC 95-0407-008--and does not readily lend itself to centralization, because of the local nature of the planning issues and functions. However, the expeditious transfer of all numbering administration functions is imperative.

Currently, when a new CO code is activated, LECs perform routing and billing data entry into RDBS (Routing DataBase System) and BRIDS (Bellcore Rating Information Database System) for themselves and other LECs who have contracted for the service. Other code holders may utilize a third party or arrange with Bellcore to input data themselves. This function should not be centralized. Accuracy and timeliness of this input is critical to the operation of the network. Code holders should be allowed to retain the option to contract with a third party to input this data or arrange with Bellcore to input the data themselves.

Because of the complexity of CO code administration, the transfer of this function should not be undertaken until existing NANPA functions have been transferred and are fully operational. Postponing the transfer of CO code administration will also allow the new NANPA to assist in the assessment and planning for those responsibilities. This should allow adequate time for the new NANPA staff to work with former administrators to ensure a smooth transition. Also, because CO code administration has significant impacts on local areas in terms of relief plans and dialing plans, state regulatory commissions should be included in any decision.

III. PUBLIC NOTICE OF TECHNICAL CHANGES

The NPRM, at paragraph 193, seeks comment "on the relationship between sections 273(c)(1) and (c)(4), which detail BOCs' disclosure requirements 'to interconnecting carriers . . . on

the planned deployment of telecommunications equipment,' and section 251(c)(5), which addresses disclosure requirements for all incumbent LECs." The disclosure obligations under the provisions are substantially similar. For years, all LECs have routinely provided adequate public notice of the types of information detailed in the Act. The Commission has been well aware of this process, and there is no need to change it.

Industry notification guidelines already exist in RECOMMENDED NOTIFICATION PROCEDURES TO INDUSTRY FOR CHANGES IN ACCESS NETWORK ARCHITECTURE, ICCF 92-0726-004, revision date January 5, 1996. These guidelines are issued by the Industry Carriers Compatibility Forum, and set forth notification procedures followed by the industry for numerous issues, including the maintenance of business relationships, problem resolution procedures and information reporting intervals.

All new local service providers should be required to adhere to the guidelines, since interoperability problems will affect not only the new providers but also the incumbent LEC networks and customers. It is in the best interests of all carriers to see that the network functions properly.

IV. ACCESS TO RIGHTS-OF-WAY

The Commission poses several questions regarding the right-of-way access obligations imposed by the 1996 Act. These questions seem to indicate an intent to adopt detailed rules to regulate utilities' provision of nondiscriminatory access to rights-of-way[16] and related obligations

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[16] "Rights-of-way," as used herein, means the same as "pole, duct, conduit or right-of-way" as used in the Pole Attachment Act, 47 U.S.C. § 224.

in Sections 224(f) and (h) of the Act. It appears to be inconsistent with the 1996 Act for the Commission to adopt detailed rules to address a variety of fact-specific issues that may or may not arise under the expanded provisions of the Pole Attachment Act. Such an approach also appears to be inconsistent with the Commission's 17-year history of enforcing the Pole Attachment Act[17] through its pole attachment complaint process. [18] Given the success of this process under the pre-1996 Pole Attachment Act, there is no reason to believe that the same complaint procedures will not be adequate to resolve issues that may arise under the Pole Attachment Act as amended by the 1996 Act. In fact, Section 224(c)(1) was amended to indicate that like all other "rates, terms and conditions" previously regulated under the Pole Attachment Act, the nondiscriminatory access requirements would also be so regulated, absent certification of state regulation of such matters pursuant to Section 224(c)(2). Consequently, for example, if an issue arose between a LEC and a carrier requesting access to rights-of-way as to whether a particular safety risk justified a limitation or restriction on access, then the Commission (or the state) could make a determination as to the reasonableness of the specific safety reason. No set of rules could anticipate all of the safety concerns that may arise under all of the various types, locations and circumstances of rights-of-way. Again, do not change something that already works.

Even before the 1996 Act, the Commission had authority to resolve disputes over a variety of terms and conditions of pole attachment agreements, other than those relating to access.[19] Even

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[17] 47 U.S.C. §224.

[18] 47 C.F.R. §1.1401 et seq.

[19] See 47 C.F.R. §1.1401 ("to ensure that rates, terms and conditions for cable television pole attachments are just and reasonable").

though the Commission has had authority to regulate the "terms and conditions" of pole attachment agreements since 1978, it has not adopted specific rules defining what terms and conditions are considered "just and reasonable" under Section 224(b)(1). In fact, under the pre-1996 Pole Attachment Act, the Commission declined to adopt any substantive rules as to which terms or conditions would be considered unreasonable. The Commission indicated that whether a term or condition is "onerous" or unreasonable depends upon the individual circumstances of the case. The Commission also noted that its experience "reveal[ed] a broad range of contractual terms and conditions" which would make it difficult to adopt detailed rules distinguishing reasonable from unreasonable terms and conditions.[20] The Commission should use the same approach to the resolution of questions concerning terms and conditions of access.

This approach to the resolution to specific issues under the nondiscriminatory access requirements of the Pole Attachment Act should work especially well in view of the 1996 Act's other incentives for allowing access, as well as the fact that utilities were already allowing access to rights-of-way long before the 1996 Act. SWBT, for instance, has over 15 years of experience in leasing right-of-way structures for communications purposes under the Pole Attachment Act.[21] SWBT has allowed this access, even though the Pole Attachment Act did not require it prior to 1996. SWBT has comprehensive policies and procedures for processing requests for access. However, other

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[20]In the Matter of Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, CC Docket No. 86-212, 2 FCC Rcd 4387, 4397 ¶¶ 72-77 (1987) ("1987 Pole Attachment Order").

[21]In 1995, SWBT administered 648 License Agreements with CATV or telecommunication providers covering both conduit and pole structures in its in-region territory. This includes the leasing of over 880,000 poles and 346,000 feet of conduit.

utilities have different policies and procedures reflecting the "broad range of terms and conditions" recognized by the Commission in 1987. It would not be wise or proper for the Commission to attempt to impose a single national standard set of procedures for access to rights-of-way. Instead, utilities' existing policies and procedures should be allowed to continue to function as they have for a number of years in allowing access to right-of-way structures. In the event that a particular utility imposes what are believed to be unreasonable restrictions or refuses to provide nondiscriminatory access, then the complaint process can be used to resolve the matter.

The scope of the Commission's action in this NPRM should be limited to only that which is necessary to implement Section 251(b)(4). The Commission does not need to develop detailed rules to resolve future pole attachment complaints. Consistent with the private industry negotiation process adopted by Congress in Section 252, the terms and conditions of "nondiscriminatory access" should be left to that flexible process. Also, under the Pole Attachment Act, the Commission typically has encouraged the parties to settle pole attachment complaints through private negotiation.[22] The only action the Commission needs to take is to amend its pole attachment complaint procedures to make them applicable to disputes concerning "nondiscriminatory access." Also, it is unnecessary for purposes of implementing Section 251(b)(4) for the Commission to adopt detailed guidelines concerning the notification required by Section 224(h). Moreover, it is not necessary for the Commission to adopt any rules at all to implement the notification requirement of Section 224(h) because it is self-implementing. Any guidelines needed to determine the allocation

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[22] Even the pole attachment rules are designed to encourage private resolution of disputes. See 1987 Pole Attachment Order, paras. 78-86.

of costs pursuant to Section 224(h) can be adopted in a future proceeding in which other pole attachment rate issues are addressed.

For the reasons set out above, it is not necessary under the 1996 Act for the Commission to adopt national guidelines concerning access to rights-of-way. If the Commission believes it must provide some guidance, it should adopt only broad, general principles to guide utilities in developing reasonable procedures for providing access. Also, these principles must be sufficiently flexible to allow utilities to have a broad range of procedures. The Commission's general principles in this area must be founded in basic fairness and equity. However, because rights-of-way are a finite resource, the principle of first-come, first-served also should apply. The Commission should not require carriers to build additional transmission facility capacity merely because their new competitors would like to place their facilities in the same rights-of-way. This is not feasible in many cases, and in other cases it will be extraordinarily expensive, potentially disruptive to the services of existing customers, and unnecessary considering the other technological means of telecommunications transport available today that do not require physical space on a pole or in a conduit. In addition, the Commission should recognize that the utility is still the owner of the facilities and its use must be paramount, including its reservation of capacity sufficient for the projected requirements to serve its customers.

Any principles the Commission adopts should, at a minimum, be sufficiently flexible to allow a utility to implement the following guidelines for providing access to outside right-of-way structures, but should also allow reasonable, alternative procedures:

- Structures must be in excess of (i) present and anticipated needs, based on a 5-year forecast and (ii) space required for municipal and maintenance requirements. This time period is necessary to satisfy "provider of last resort" obligations. The capacity

of the system should not be relinquished merely because a competitor desires to place its facility in an existing conduit system without regard to the limited capacity and forecasted requirements for service.

- Structures would be leased for communications purposes; *i.e.*, power conductors for the transmissions of high voltage current would not be allowed in the conduit system. All attachments to structures would conform to the standards established by the National Electric Safety Code (NESC), and the National Electric Code (NEC).

- The applicant must be "legally qualified"[23] to use SWBT's structures for the intended function/purposes.

- Where the facility is to be located on a public right-of-way, the applicant must obtain any authorization required by the proper governmental source granting permission for such use of the public rights-of-way.

- Where the facility is to be located on private property, the applicant must secure an easement from the current owner of the property.

- License agreements must contain all of the customary terms and conditions such as maintenance, liability, and billing procedures, as well as determining the appropriate access location.

V. CONCLUSION

The Communications Act of 1996 provides the Commission a perfect opportunity to begin the transition to a market-based telecommunications industry. The process will not occur overnight, but substantive and far-reaching changes are at hand, particularly in the areas of dialing parity, number administration, notice of technical changes, and access to rights-of-way.

IntraLATA toll dialing parity is a necessary component of telecommunications competition, and SBC, through its LEC affiliate SWBT, is prepared to move forward with the "two PIC method." SWBT is also prepared to offer operator services to local service providers (facilities and non-

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[23] For example, the applicant must have any certificate of authority required to provide its communication service.

facilities-based) under voluntarily negotiated agreements. Any telephone customer, regardless of his local telephone service provider, will be able to connect to an operator by dialing "0" or "0" plus the desired number.

SBC believes that number administration is best performed by a single independent entity approved by the Commission, but not otherwise associated with any regulatory agency and not closely identified with any industry segment. SBC supports the expeditious transfer and centralization of CO code administration into the new NANPA, but urges that all relevant issues first be fully addressed and resolved. Premature transfer of CO code assignment responsibility--before the industry has answered the many outstanding questions--would be counterproductive, especially in areas running out of telephone numbers.

For years, all LECs have routinely notified the industry of technical network changes. Notification guidelines already exist, issued by the Industry Carriers Compatibility Forum, and are followed by the industry for numerous issues, including the maintenance of business relationships, problem resolution procedures and information reporting intervals.

SBC believes that specific right-of-way issues should be resolved through private negotiation rather than public regulation. The Commission should not adopt detailed rules to regulate the provision of nondiscriminatory access to rights-of-way.